Failing to Develop Justice: How SCOTUS Holds Habeas Petitioners Responsible for Ineffective Counsel's Failure to Develop the Record [Shinn v. Ramirez, 142 S. Ct. 1718 (2022)]

Lindsay N. Kornegay

When a criminal defendant receives ineffective assistance of counsel at trial, the defendant may attack the legality of their confinement through postconviction proceedings. But what happens when postconviction counsel is also ineffective and fails to properly raise the issue of ineffective assistance of trial counsel? Prior to Shinn v. Ramirez, federal courts provided a slim opportunity for relief when a defendant received ineffective assistance during both trial and postconviction proceedings for state-level charges. Ramirez constructively closed this narrow avenue for federal relief, however. Ramirez holds that when a state record is underdeveloped, federal courts may not allow further development of the record, even when ineffective counsel caused the underdevelopment of the record. Ramirez therefore weakens the ability to meaningfully redress the issue of ineffective trial counsel because an underdeveloped record often results in insufficient evidence to support a claim. Effectively foreclosing federal habeas relief for state-level charges bodes particularly ominous considering the underfunding of public defense systems. State and federal legislative bodies must act to mitigate the harmful effects of Ramirez.

I. INTRODUCTION

The right to effective counsel during a criminal trial is axiomatic to the American criminal justice system, enshrined in the Sixth Amendment of the United States ("U.S.") Constitution and further defined by case law.[1] Defense attorneys are meant to act as knowledgeable advocates to competently guide defendants through our complex legal system. Unfortunately, reality does not always align with this ideal. When a criminal defendant receives ineffective assistance of trial counsel, how much grace do courts allow to rectify the Sixth Amendment violation? What happens when a defendant also receives ineffective postconviction

1. *E.g.*, Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

counsel from an attorney who does not adequately address the trial counsel's deficiencies?

Shinn v. Ramirez[2] guts one avenue in which a defendant may meaningfully address ineffective assistance of counsel claims when a defendant receives ineffective assistance during both trial and postconviction proceedings. Recent Supreme Court precedent has held that a federal court may consider a petitioner's claim of ineffective assistance of trial counsel arising out of a state criminal case when a petitioner also had ineffective postconviction counsel who failed to properly plead the claim.[3] *Ramirez* attacks the utility of this precedent, however, by holding that a petitioner may not present new evidence to support the ineffective-assistance claim.[4] Although ineffective counsel may cause the underdevelopment of the record, *Ramirez* holds that a petitioner must pay the price for the ineffective counsel's negligence; equitable considerations do not allow the petitioner to supplement the record to vindicate their claim.[5]

II. BACKGROUND

A. Case Description

1. Two Arizona Death Penalty Convictions

Shinn v. Ramirez involved the death sentences of two respondents, David Ramirez and Barry Lee Jones, convicted in Arizona state court.[6] On direct review, the Arizona Supreme Court affirmed the death sentences of both men.[7] The Court subsequently denied Ramirez and Jones postconviction relief.[8] Following the denial of their state habeas claims, Ramirez and Jones filed federal postconviction habeas corpus petitions.[9] They argued they were illegally detained because they received ineffective assistance of counsel at trial in violation of their Sixth Amendment rights.[10]

2. Shinn v. Ramirez, 142 S. Ct. 1718 (2022).
3. Martinez v. Ryan, 566 U.S. 1, 17 (2012); Trevino v. Thaler, 569 U.S. 413, 429 (2013).
4. *Ramirez*, 142 S. Ct. at 1737–39.
5. *See id.*
6. *Id.* at 1724.
7. *Id.*
8. *Id.*
9. *Id.*
10. *See id.* When prisoners are in custody as a result of a state criminal conviction, the prisoner may only petition for *federal* habeas corpus relief by alleging they are detained in violation of the United States ("U.S.") Constitution or other applicable federal law. 28 U.S.C. § 2254(a). This is based on the principle of dual sovereignty and the federal government's reluctance to override a state's ability to enforce criminal law. *Ramirez*, 142 S. Ct. at 1730–31.

2. David Ramirez

In David Ramirez's case, the U.S. District Court for the District of Arizona initially determined that it was procedurally barred from hearing Ramirez's federal habeas claim for ineffective assistance of trial counsel.[11] The district court held that Ramirez had failed to first present the claim in state court.[12] Courts define this failure to properly present claims as "procedurally defaulted."[13] Ramirez responded that the federal district court should forgive the default because Ramirez's state postconviction counsel negligently failed to raise the claim in state court.[14] The federal district court allowed Ramirez to supplement the state court record through various filings in the federal habeas case.[15] The federal district court then held that although it would excuse the procedural default, Ramirez's federal habeas petition should be rejected on the merits.[16]

On appeal, the Ninth Circuit reversed and remanded the denial of Ramirez's federal petition.[17] Although the Ninth Circuit agreed that the district court should excuse Ramirez's procedural default, the Ninth Circuit also held that the federal district court should allow Ramirez to further develop the state evidentiary record to assert his federal claim that he received ineffective assistance of counsel at trial.[18] Following a denial for rehearing of the Ninth Circuit's decision, the State of Arizona petitioned the U.S. Supreme Court for review.[19]

3. Barry Lee Jones

Barry Lee Jones's case followed a similar procedural history. Like Ramirez, Jones had also failed to properly plead a claim for ineffective assistance of trial counsel during state habeas proceedings.[20] After filing a federal habeas action, the U.S. District Court for the District of Arizona allowed Jones to supplement the state court record with an evidentiary hearing to support Jones's claim.[21] Following the evidentiary hearing, the federal district court forgave Jones's procedural default and agreed that Jones had received ineffective assistance of counsel at trial.[22] The Ninth

11. *Ramirez*, 142 S. Ct. at 1729.
12. *Id.*
13. *Id.* at 1727–28.
14. *Id.* at 1729.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.* at 1729–30.
20. *Id.*
21. *Id.*
22. *Id.*

Circuit affirmed the ruling.[23] In a petition to the U.S. Supreme Court, the State of Arizona joined the Jones and Martinez cases for review because the judgments were both issued from the Ninth Circuit and addressed the same procedural issue.[24]

B. Legal Background

1. A Primer on State and Federal Habeas Corpus Petitions

A useful place to begin a discussion of *Shinn v. Ramirez* is a big picture overview of habeas corpus petitions. A defendant has two main avenues for challenging a criminal conviction: (1) on direct appeal; or (2) through collateral review (also known as "postconviction review" or "collateral attack").[25] A direct appeal is generally defined as "any claim that would not have been aided by evidence outside the trial record."[26] Collateral review refers to a civil suit separate from the criminal case at issue.[27] Habeas corpus petitions fall into the second category of collateral review because prisoners bring a separate civil suit to challenge the legality of their confinement.[28]

Prisoners convicted of state offenses may have the possibility of filing state and/or federal habeas petitions.[29] Various state statutes allow prisoners to bring state habeas claims.[30] Before seeking federal relief for a state judgment, a prisoner generally must exhaust all available state remedies.[31]

The doctrine of dual sovereignty (or "federalism") guides the need to exhaust all available state remedies before filing a federal habeas petition challenging state detention.[32] Allowing federal courts to overturn state convictions limits the power of states to prosecute individuals in accordance with local law.[33] Upholding the nation's system of dual sovereignty means allowing state courts the opportunity to first address habeas claims before allowing a federal court to weigh in on the issue.[34] The need for finality in

---

23. *Id.*
24. Petition for Writ of Certiorari at 1, *Ramirez*, 142 S. Ct. 1718 (No. 20-1009).
25. WAYNE R. LAFAVE, JEROLD H. ISRAEL, NANCY J. KING & ORIN S. KERR, CRIMINAL PROCEDURE § 28.11(b) (4th ed. 2022).
26. *Id.* at § 11.7(e).
27. *Id.* at § 28.1(a).
28. ERWIN CHEMERINSKY & LAURIE L. LEVENSON, CRIMINAL PROCEDURE: ADJUDICATION 535 (3d ed. 2018).
29. *See* 28 U.S.C. § 2254; *see also* 13 AM. JURIS. PLEADING & PRAC. FORMS: HABEUS CORPUS § 170 (2023) [hereinafter JURISPRUDENCE].
30. JURISPRUDENCE, *supra* note 29.
31. 28 U.S.C. § 2254(b)(1).
32. LAFAVE ET AL., *supra* note 25, at § 28.4(a).
33. *Id.*
34. *Id.*

a state conviction, however, is balanced against the accused's right to federal protections derived from the U.S. Constitution and other applicable federal law.[35] Although state habeas petitions may allege violations of both state and federal rights, permitting federal habeas petitions in addition to state petitions acts as a check on state power.[36] These federal petitions also afford the accused supplementary protection when the ultimate issue of life or liberty is at stake.[37]

2. AEDPA and Supplementing the Record

The Antiterrorism and Effective Death Penalty Act ("AEDPA") governs federal habeas review for state detention.[38] Although the name of the act may cause some confusion, AEDPA applies to all state-level detentions, not just state detentions involving terrorism charges or death penalty judgments.[39] Enacted in 1996, AEDPA restricted the availability of federal relief for state convictions.[40] One way in which AEDPA limits federal habeas petitions is by codifying the requirement that a petitioner generally must first raise claims in state habeas proceedings before filing for federal relief.[41] Case law somewhat broadens AEDPA's requirements. The recent U.S. Supreme Court case of *Martinez v. Ryan*[42] held that, despite AEDPA's limitations, equitable considerations may allow federal courts to hear a petitioner's defaulted ineffective-assistance claim.[43] The Court determined that if ineffective postconviction counsel caused the default, principles of equity should permit forgiveness of the default.[44]

The issue in *Ramirez*—whether a petitioner in a federal habeas action may supplement a state-court record when ineffective counsel fails to develop the record—focuses on AEDPA, Section 2254(e)(2).[45] This subsection of AEDPA states that federal courts generally must rely only on state-court records and they may not hear additional evidence if the petitioner "failed to develop the factual basis of a claim in State court

35. *Id.*
36. *Id.*
37. *Id.*
38. 28 U.S.C. § 2254.
39. *See* 28 U.S.C. § 2254(a) (requiring federal courts to "entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State" without the requirement of a terrorism charge or a death penalty judgment).
40. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214.
41. *See* 28 U.S.C. § 2254(b)(1) ("An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—(A) the applicant has exhausted the remedies available in the courts of the State; or (B)(i) there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.").
42. *Martinez v. Ryan*, 566 U.S. 1 (2012).
43. *Id.* at 9.
44. *Id.*
45. *Shinn v. Ramirez*, 142 S. Ct. 1718, 1728 (2022).

proceedings."[46] If a petitioner failed to develop the state record, Section 2254(e)(2) allows federal supplementation of the record under extremely narrow circumstances.[47]

Central to *Ramirez* is whether a petitioner meets the statutory definition of "fail[ing] to develop" the record when the petitioner's ineffective postconviction counsel caused the underdevelopment of the record.[48] The requirements of AEDPA severely restrict development of the state record in an effort to preserve dual sovereignty.[49] The principles of equity, however, raise the question of whether a petitioner had a substantive opportunity to challenge the denial of their Sixth Amendment right to effective trial counsel when their postconviction counsel was also ineffective. If cases such as *Martinez* and *Trevino* excuse a petitioner's procedural default,[50] it logically follows that a petitioner can also introduce new evidence to support the claim. Nevertheless, the Supreme Court reached a different conclusion in *Ramirez*.[51]

III. COURT'S DECISION

In *Shinn v. Ramriez*, with Justice Thomas writing for the majority, the Court held that even when ineffective postconviction counsel caused an underdeveloped state record, federal courts must attribute fault to the petitioner.[52] The opinion recognized the precedents of *Martinez v. Ryan* and *Trevino v. Thaler* which created equitable allowance for federal ineffective-assistance claims that were not first exhausted in state court.[53] Nevertheless, the Court did not extend similar equitable considerations to allow the additional development of a state-court record.[54] Because the Court held the petitioner is at fault for failing to develop the state-court record,[55] federal courts must then apply AEDPA, Section 2254(e)(2)(A)-(B). This subsection of AEDPA limits the development of evidence to extremely narrow circumstances.[56]

---

46. 28 U.S.C. § 2254(e)(2).

47. These narrow circumstances include if "the claim relies on—(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence." § 2254(e)(2)(A). The statute also requires the underlying facts of the claim sufficiently "establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." § 2254(e)(2)(B).

48. *Ramirez*, 142 S. Ct. at 1728–30.

49. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214; *see Ramirez*, 142 S. Ct. at 1730.

50. *Martinez v. Ryan*, 566 U.S. 1, 9 (2012); Trevino v. Thaler, 569 U.S. 413, 423 (2013).

51. *See Ramirez*, 142 S. Ct. at 1740.

52. *Martinez*, 566 U.S. at 9; *Trevino*, 569 U.S. at 423.

53. *Ramirez*, 142 S. Ct. at 1733; *see Martinez*, 566 U.S. at 9; *Trevino*, 569 U.S. at 423.

54. *Ramirez*, 142 S. Ct. at 1736.

55. *Id.*

56. *See* 28 U.S.C. § 2254(e)(2).

IV. COMMENTARY

At oral arguments, Justice Thomas stated it would seem "rather odd" and "worthless" to excuse a procedural default under cases such as *Martinez v. Ryan* but not allow a petitioner to further develop the record to support the claim.[57] Although these statements belie the opinion that Justice Thomas would later author, the statements succinctly reach the impact of *Ramirez*.[58] The Court did not explicitly overrule *Martinez* and *Trevino v. Thaler*, but those precedents are effectively worthless following *Shinn v. Ramirez*.[59] Justice Thomas acknowledged that "[o]ften, a prisoner with a defaulted claim will ask a federal habeas court not only to consider his claim but also to permit him to introduce new evidence to support it."[60] Still, despite acknowledging this reality, *Ramirez* requires federal courts to review ineffective-assistance claims with underdeveloped state records that cannot support a claim.

Justice Thomas placed the doctrine of dual sovereignty above a petitioner's ability to fully vindicate the denial of their Sixth Amendment right.[61] He wrote almost with disdain of the equitable exceptions for procedural defaults, unexhausted claims, and the ability to further develop evidence of ineffective counsel.[62] Although a state court's ability to review state convictions is important to upholding dual sovereignty, courts must balance federalism against the right to effective assistance of counsel and due process.[63] The need to properly defend ineffective-assistance claims becomes especially imperative when petitioners face death sentences.[64]

Justice Thomas also supported the holding of *Ramirez* by excessively citing the inflammatory allegations underpinning the convictions at issue.[65] In an opinion that required only legal analysis, Justice Thomas needlessly

57. Transcript of Oral Argument at 5, *Ramirez*, 142 S. Ct. 1718 (No. 20-1009) [hereinafter Transcript].

58. *See Ramirez*, 142 S. Ct. at 1740 (Sotomayor, J., dissenting) ("This decision is perverse. It is illogical: It makes no sense to excuse a habeas petitioner's counsel's failure to raise a claim altogether because of ineffective assistance in postconviction proceedings, as *Martinez* and *Trevino* did, but to fault the same petitioner for that postconviction counsel's failure to develop evidence in support of the trial-ineffectiveness claim.").

59. *Id.* at 1747 ("The doctrinal consequence of the Court's distortion of precedent is to render *Martinez* and *Trevino* dead letters in the mine run of cases.").

60. *Id.* at 1728 (majority opinion).

61. *Id.* at 1748 (Sotomayor, J., dissenting) ("The Court seriously errs by suggesting that [The Antiterrorism and Effective Death Penalty Act of 1996] categorically prioritizes maximal deference to state-court convictions over vindication of the constitutional protections at the core of our adversarial system.").

62. *Id.* at 1732 (majority opinion) ("Despite the many benefits of exhaustion and procedural default, and the substantial costs when those doctrines are not enforced, we have held that a federal court is not required to automatically deny unexhausted or procedurally defaulted claims.").

63. *Id.* at 1748 (Sotomayor, J., dissenting).

64. *Id.* at 1748–49.

65. *Id.* at 1728 (majority opinion).

provided detailed descriptions of the heinous allegations[66] to further justify the denial of evidentiary development. The *Ramirez* opinion impacts cases with more benign facts, of course. And even defendants in the most shocking cases have the constitutional right to effective assistance of counsel.[67] All defendants must receive the opportunity to truly vindicate their Sixth Amendment rights.

At oral arguments, the Arizona Solicitor General stated even "the worst-case scenario" of "[actual] innocence" is irrelevant to the ability to further develop a state-court record for evidence of ineffective assistance of trial counsel.[68] The relationship between actual innocence and ineffective assistance of counsel is troubling. A 2010 study by the Innocence Project found that out of 255 DNA exoneration cases, appellants in 54 of the cases (21%) had raised issues of ineffective assistance of counsel.[69] In light of this statistic, the holding in *Ramirez* is particularly disturbing.

The untenable caseloads of public defenders add to the dangers posed by *Ramirez*. Adequate representation by counsel requires more than "providing the defendant a warm body with a bar card."[70] Providing satisfactory representation requires time.[71] Public defenders represent a large portion of all criminal defendants, but public defenders often do not have the time to sufficiently represent clients due to large caseloads.[72] For example, one study published by the American Bar Association in early 2017 found that for Louisiana to follow recommended workloads, the state would have to employ approximately 1,769 full-time public defenders.[73] In 2016, Louisiana employed only 363 full-time public defenders.[74] When large caseloads and underfunded criminal defense systems impede effective assistance of counsel, limiting meaningful remedies for Sixth Amendment violations is patently unjust.

---

66. *Id.*

67. *Id.* at 1740–41 (Sotomayor, J., dissenting).

68. Transcript, *supra* note 57, at 11.

69. EMILY M. WEST, INNOCENCE PROJECT, COURT FINDINGS OF INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS IN POST-CONVICTION APPEALS AMONG THE FIRST 255 DNA EXONERATION CASES 1 (Sept. 2010), https://www.innocenceproject.org/wp-content/uploads/2016/05/Innocence_Project_IAC_Report.pdf [https://perma.cc/3Q8K-3LWK].

70. *Caseloads*, NAT'L ASS'N OF CRIM. DEF. LAWS. (Feb. 28, 2023), https://www.nacdl.org/Content/Caseloads.

71. *Id.*

72. *See e.g.*, *Kansas's System of Public Defense*, KAN. STATE BD. OF INDIGENTS' DEF. SERVS., https://www.sbids.org/kansas-system-of-public-defense [https://perma.cc/4B69-MPFC] (last visited Oct. 16, 2023) (explaining that "85% of adults charged with felonies in Kansas qualify" for a public defender and that Kansas public defenders "handled a grand total of 26,237 cases.").

73. POSTLETHWAITE & NETTERVILLE, APAC & AM. BAR ASS'N STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, THE LOUISIANA PROJECT: A STUDY OF THE LOUISIANA DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS 2 (2017), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf.

74. *Id.*

V. CONCLUSION

Despite Sixth Amendment protections, some defendants inevitably receive ineffective assistance of counsel. Ideally, direct appeals or collateral attacks would redress this denial of constitutional rights. Sometimes, however, postconviction counsel also fails to provide effective representation. *Shinn v. Ramirez* limits federal habeas corpus remedies for state convictions by denying equitable allowances to develop state-court records. To rectify some of the damage of *Ramirez*, states must increase funding for public defense to reduce rates of ineffective counsel. Alternatively or additionally, Congress must rewrite AEDPA to explicitly allow more equitable exceptions for the development of state-court records in federal habeas claims.